(1) Supreme Court, U.S.
FILED

011798 JUN - 7 2002

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No.

In The

Supreme Court of the United States

Melvin E. Blough,

Petitioner

v.

United States of America,
Supreme Court of the United States,
William H. Rehnquist, Chief Justice of the Supreme Court, United States Court of Appeals for the Eleventh Circuit, United States District Court Middle District of Florida Tampa Division,

Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT IN THE ABSENCE OF JUDICIAL PROFILING BY THE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Melvin E. Blough
Pro Se - Petitioner
803 Tomahawk Trail
Brandon, FL 33511
(813) 651-3158

9079S

QUESTIONS PRESENTED

The dynamics of the questions presented are dependant upon recognition of a constitutional obligation; conferring a specific right which is *indebitatus assumpsit* to the totally disabled veteran; whose status is inherent to the constitutional power of Congress to declare war.

As of September 30, 2000; one hundred seventy thousand three hundred seven (170,307) veterans were recognized by the United States Department of Veterans Affairs as totally disabled (100%) (source: Department of Veterans Affairs FY 2000 Annual Report).

The constitutional obligation to totally disabled veterans and the judicial conduct of the Federal courts are matters of national concern. The Federal judiciary was established under Article III of the Constitution; however the "power and influence (of the Federal judiciary) rests solely upon the public sense of the necessity for the existence of a tribunal to which all may appeal for the assertion and protection of rights guaranteed by the constitution and by the laws of the land, and on the confidence reposed in the soundness of their decisions and the purity of their motives." *United States v. Lee*, 106 U.S. 196 (1882).

1. Did the war powers clause of the Constitution create a constitutional obligation to totally disabled veterans guaranteeing an inherent constitutional right to procedural due process in complaints of threats of physical injury by the United States Government ?

2. Does the denial of procedural due process by the Federal Judiciary, under the facts presented in question number one, provide a constitutional exception to the doctrine of sovereign immunity in a complaint of constitutional limitation directed to the Federal Judiciary ?

3. Is it constitutionally void for the Federal Judiciary to substitute themselves for the jury or otherwise rule upon their own liability in the absence of sovereign immunity ?

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OPINIONS BELOW

The final decision of the district court is unreported (App. at 3-4).

JURISDICTION

Federal jurisdiction (Title 28 U.S.C. section 1331) over the subject matter of this complaint (App. at 10-42) arose under Article I. (Section 8, cl. 11, 12) and Article III. (Section 2, cl. 1) of the Federal Constitution in concert with the Fifth and Seventh Amendments to the Constitution.

An appeal from the final Order by the United States District Court for the Middle District of Florida (App. at 3-4) was timely filed to the United States Court of Appeals for the Eleventh Circuit with jurisdiction under Title 28 U.S.C. section 1291(Case No. 02-12177-F).

On May 27, 2002 Plaintiff-Appellant-Petitioner (hereafter Blough's) brief was filed with the Court of Appeals requesting certification to the United States Supreme Court under the provisions of Title 28 U.S.C. section 1254(2). The facts, law and arguments presented to the Court of Appeals mirror that presented in this petition for writ of certiorari.

The case is now properly before the Supreme Court on the writ of certiorari before judgment by the Court of Appeals as to the dispositive Order by the United States District Court for the Middle District of Florida (App. at 3-4). Title 28 U.S.C. sections 1254(1), 2101(e) and U.S.SUP.Ct.R. 11.

BASIS IN GRANTING THE WRIT IN ADVANCE OF JUDGMENT IN THE COURT OF APPEALS:

This complaint of constitutional limitation is direct to the Defendants-Appellees-Respondents (hereafter "Courts"), not for the abuse of judicial discretion; but rather for the intentional abuse of judicial power under Article III. Section 2, clause 1 of the Constitution.

It is Blough's position that the United States Constitution, as amended, provides an obligation (inherent constitutional right) to totally disabled veterans which negates the claim of sovereign immunity to the denial of procedural due process by the Courts. Further; it is constitutionally void for the Courts to substitute themselves for the jury or otherwise rule upon their own liability in the absence of sovereign immunity.

The questions presented meet the test of imperative public importance in that, based upon the facts presented, the Courts have abused their constitutional authority such as to justify deviation from normal appellate practice. The following conclusions were presented by the Supreme Court in those cases to which certiorari was granted before judgment:

> "This (Constitutional) power must be exercised in subjection to the guarantee of due process of law found in the Fifth Amendment." *Railroad Retirement Board v. Alton R. Co.*, 295 U.S. 330 (1935).
>
> "While (Constitutional) powers are rigidly limited to enumerations of Constitution, means which may be employed within (the

> Federal Government's) discretion to carry powers into effect are not restricted except that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, letter and spirit of Constitution. *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936).
>
> "Congress and the President, like the courts, possess no power not derived from the Constitution." *Ex parte Quirin*, 317 U.S. 1 (1942).

As the referenced cases indicate, the Supreme Court has granted certiorari before judgment to consider and decide those questions of public importance directed to the alleged abuse of constitutional power by the Legislative and Executive Branches of the Government. The Constitution requires that the Supreme Court do no less to the actions of the Courts in that the "power and influence (of the Federal judiciary) rests solely upon the public sense of the necessity for the existence of a tribunal to which all may appeal for the assertion and protection of rights guaranteed by the constitution and by the laws of the land, and on the confidence reposed in the soundness of their decisions and the purity of their motives." *United States v. Lee*, 106 U.S. 196 (1882).

1. The questions of law presented are not to be avoided or evaded:

The constitutional obligation presented as question number one is not a benefit for veterans to be addressed by Congressional statute. The obligation creates an inherent right under the constitution, directed to totally disabled veterans, which is properly recognized by the Supreme Court as so deeply rooted

in the traditions and conscience of our people as to be ranked as fundamental. "The province of the court," as Chief Justice Marshall said in *Marbury v. Madison*, 5 U.S. (1 Cranch) (1803) "is solely, to decide on the rights of individuals."

Question number one has been presented to the district court three times, the court of appeals twice, and the Supreme Court once. The Courts have all failed to respond to the question. Grounds not passed on by court of appeals, but argued in Supreme Court orally and in the briefs would be considered by Supreme Court granting certiorari, where such grounds raised only issues of law not calling for examination or appraisal of evidence. *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211 (1951).

Question number one invites the Supreme Court to recognize a constitutional obligation to a specific right of those totally disabled veterans whose lives have been adversely affected by the power of Congress to declare war. Questions number two and three address the liability and authority of the Federal Judiciary when said constitutional obligation is abused by the Federal Judiciary. The importance of the constitutional rights of totally disabled veterans, the abusive judicial conduct and loss of judicial authority by the lower Courts are compelling reasons for the Supreme Court to exercise its supervisory authority over the district and appellate courts as provided under U.S.Sup.Ct.R. 10(a). The Supreme Court is a named defendant; however the cause of action is limited to allegation number six of the complaint (App. at 20) and far removed from the questions of law presented. The Supreme Court is not concerned with the question of liability.

2. The judicial abuse by the lower Courts must be restrained by the constitutional authority of the Supreme Court.

> "Statutory rights and obligations are established by Congress ..... The Constitution, on the other hand, does not 'partake of the prolixity of a legal code' *McCulloch v. Maryland*, 17 U.S. 316 (1819). It speaks instead with a majestic simplicity. One of 'its important objects,' *ibid.*, is the designation of rights. And in 'its great outlines,' *ibid.*, the judiciary is clearly discernible as the primary means through which these rights may be enforced." *Davis v. Passman*, 442 U.S. 228, 242 (1979).

Article 3. section 2, clause 1 of the Constitution does, upon its face, limit judicial power in this complaint to those Courts whose judicial misconduct in the prior litigation is the subject matter of the current litigation. Justice requires the Courts to look within the *majestic simplicity* of the constitution and accept the truth that it is unconstitutional to rule upon their own liability in the absence of sovereign immunity. The Courts are a means by which constitutional rights may be enforced, not abused.

The respective Courts are without judicial authority to determine liability in this complaint; as they are the alleged violators of Blough's Fifth Amendment right to procedural due process. The Courts can no more cease to be defendants by donning judicial robes, than Osama bin Laden can become Willie Nelson by putting on a cowboy hat. They are each the product of their actions.

Blough has been denied due process of law as the lower Courts have assumed the rolls of judge, jury and

defendant since the inception of the initial complaint on June 29, 1998. The Courts (with the exception of the Chief Judge for the district court at App.1-2) have intentionally ignored specific facts for the purpose of judicially profiling the Fifth Amendment rights of a totally disabled veteran. This petition is of imperative public importance.

In the initial complaint, the defendant district court did ignore a timely filed amendment (and the defendant Federal Government's response) alleging constitutional tort by the Government. The cause of action for constitutional tort was noted, but not addressed in either the defendant district or appellate court rulings. Blough did return to the same Courts to complain that the Courts had failed to address the cause of action for constitutional tort. The defendant district and appellate courts did falsely state that no amendment was filed in the initial litigation and summarily dismissed Blough's complaint (even though the amendment and Government's response were plainly within the court record of the initial complaint). In the instant complaint, the Chief Judge for the defendant district court did review the court records in the prior complaints in conjunction with the instant complaint and determine that sufficient evidence of judicial abuse was presented within the records to warrant reassignment of the case to a judge not involved with the prior litigation (App at 1-2). The reassigned trial judge; who chose to ignore the facts and the effort by the Chief Judge to correct the past abuse of power by the Courts, summarily dismissed the alleged improprieties by the Courts as frivolous.

Abuse of judicial power by the defendant district court and the absence of judicial authority to determine liability by the defendant Courts, limits review to the three questions of law presented. The

liability of the Courts for their actions is properly determined *by the people* in trial by jury.

This claim of constitutional limitation to the judicial power of the Courts provides an exception to the rule and a basis to grant the petition for writ of certiorari before judgment in the Court of Appeals. Title 28 USC sec. 1254(1), 2101(e), U.S.SUP.Ct.R. 11.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Those Constitutional provisions involved are the War Powers Clause (art. 1, section 8, cl. 11, 12); the Jurisdiction of Courts Clause (art 3, section 2, cl. 1); the Fifth and Seventh Amendments to the United States Constitution. The public laws and statutes involved are Public Law 85-857 (Veterans Benefits) and Title 38 U.S.C. Veterans Benefits; Title 28 U.S.C. Judiciary and Judicial Procedure sections 1254, 1291, 1331, 1654, and 2101(e). Rules 10(a), 11 of the United States Supreme Court. All constitutional provisions, statutes and rules involved appear in the App. at 5-9.

STATEMENT OF CASE AND FACTS MATERIAL TO CONSIDERATION OF QUESTIONS PRESENTED:

This complaint is unique as to the facts and issues of constitutional law presented. Blough, as a totally and permanently disabled veteran, did previously complain to the Courts of threats of physical injury by the Government (Federal cause of action for damages as Fifth Amendment liberty interest violation) and the response by the Courts (as the guardian of due process under Article III the Constitution) was to intentionally deprive Blough of his Fifth Amendment right to procedural due process

(App. at 20-36). The Supreme Court has held that a cause of action for damages is a property right and cannot be taken by adjudication without due process of law. *Mullane v.Central Hanover Bank and Trust Co.,* 339 U.S. 306, 313 (1950)). This complaint of constitutional limitation is directed to the abuse of judicial power by the Courts.

Blough did appeal the prior decisions by the defendant district court (Blough v. Rubin, Case No. 8:98-CIV-1358-T-24, and Blough v. Department of the Treasury, Case No. 8:00-CIV-1631-T-26) to the defendant appellate court (Case No. 99-13735, and Case No. 00-16546) alleging denial of procedural due process by the respective district court. The respective appeals were summarily denied by the court of appeals. See discussion in complaint (App at 29-30, 34-36).

Blough's only recourse was to return to the same Courts in the instant complaint and complain of constitutional limitation directed to the abuse of judicial power by the Courts in the denial of Blough's Fifth Amendment property right in the prior litigation (App at 10-37).

Blough did, upon filing of the instant complaint, Motion the Chief Judge for the district court to reassign the case to a trial judge not involved in the prior litigation in that the instant complaint is based upon allegations of deliberate and intentional denial of due process by the Courts (App at 43-45). The Order by the Chief Judge for the district court, in response to Blough's Motion, states that "the undersigned **has reviewed the three cases filed** in this court by the plaintiff, the instant case, Blough v. Rubin, Case No. 8:98-CIV-1358-T-24, Blough v. Department of the Treasury, Case No. 8:00-CIV-1631-T-26, and **finds**

the plaintiff's request to be well-taken."(App at 1-2).

The soundness of the decisions and the purity of the motives of the defendant district court and defendant appellate court in the prior litigation are brought into question by the thorough review of the same case files by the Chief Judge of the district court in the current litigation. The Chief Judge of the district court is to be commended for her honesty.

Ignoring the commendable effort to correct past injustice by the Chief Judge (App at 1-2), the reassigned trial judge summarily dismissed the complaint as frivolous based on an indisputably meritless legal theory (App at 3-4).

Blough has made seven affirmative allegations of constitutional limitations upon the Courts' powers and has made claim that the Courts' actions amounted to an unconstitutional taking by the sovereign (App. at 12-13, 15-20, 38-39).

REASONS FOR GRANTING THE PETITION

This appeal warrants acceptance and consideration in matters of federal law and national import as to which the Supreme Court has final jurisdiction based upon the following considerations:

1. **The recognition of a constitutional obligation conferring an inherent constitutional right which is "so rooted in the traditions and conscience of our people as to be ranked as fundamental". *Palko v. State of Connecticut*, 302 U.S. 319 (1937).**

No continuing relation between the Federal Government (hereafter "Government") and a citizen is

more distinctively federal in character than that between it and the totally disabled veteran. The scope, nature, implied contracts and reciprocal obligations of the relation are derived from the constitution, are governed by federal authority, and have been the subject of Congressional recognition since the inception of the Republic. The Government has the exclusive power to establish and define the relation by virtue of its military and other powers (including the powers of Congress to 'provide for the common Defence,' 'To declare War,' 'raise and support Armies,' and 'make all laws which shall be necessary and proper for carrying into execution the foregoing powers,' U.S. Const., Art. I, section 8). The determination by the Government as to status as a totally disabled veteran is provided under P.L. 85-857, Title 38 U.S.C., Part II, Chapter 11, Subchapter II, sections 1110, 1114(j).

The instant complaint provides the following cause of action (App. at 12-13):

> "This cause of action addresses the *special* right of totally and permanently disabled veterans to appear and be heard by the Courts in complaints of threats of physical injury by the Government. It is difficult to imagine a claim more deserving of the Fifth Amendment right to procedural due process. It is unconscionable that the Government, in the capacity of the named defendants', has summarily deprived a totally and permanently disabled veteran of the right to procedural due process in a Federal cause of action."

The analytical structure under which this claim of constitutional limitation should be addressed is presented in *Siegert v. Gilley*, 500 U.S. 226, 233

(1991), as opposed to *Harris v. McRae*, 448 U.S. 297, 308 (1980). The adequacy of due process is dependant upon the adjudication of the constitutional right presented. When due process clause is invoked in novel context, court must begin inquiry with determination of precise nature of private interest that is threatened, and only after that interest has been identified, can court properly evaluate adequacy of process. *Lehr v. Robertson*, 463 U.S. 248 (1983).

An objective of the Constitution was to define governmental powers in general terms in order that the people of the United States may (among other stated purposes) establish justice, ... provide for the common defence, ... and secure the blessings of liberty. To those objectives Congress was granted the power to declare war, raise and support armies; and the Courts were granted judicial power in all cases in Law arising under the Constitution to which the United States is a Party.

> "The exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war declared by the great representative body of the people. It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need; and the right to compel it. In fact the duty of the citizen to render military services and the power to compel him against his consent to do so was expressly sanctioned by the Constitution of at least nine of the states, an illustration being afforded by the following provision of the Pennsylvania Constitution of 1776: 'That every member of society hath a right to be protected in the

enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion toward the expense of that protection, and yield his personal service when necessary, or an equivalent thereof.'" *Arver v. United States*, 245 U.S. 366 (1918).

Taking of private property by the Government in time of war: "Private rights, under such extreme and imperious circumstances (war), must give way for the time to the public good, but the Government must make full restitution for the sacrifice. 'A great mass of human transactions depend upon implied contracts which are not written, but grow out of the acts of the parties. In such cases the parties are supposed to have made those stipulations which, as honest, fair and just men, they ought to have made'. There can be no more comprehensive definition of an implied contract. It applies to governments as well as individuals, and determines the liabilities of each, with the same regard to justice and reason. *United States v. Russell*, S.C., 13 Wall., 623-632 (1871) (citing *Chief Justice Marshall, Gibbons v. Ogden*, 12 Wheat., 341). *Indebitatus assumpsit* is founded upon what the laws term an implied promise on the part of the defendant to pay what, in good conscience, he is bound to pay to the plaintiff, but the law will not imply a promise to pay unless some duty creates such an obligation". United *States v. Russell*, supra.

The "national debt" is not measured in dollars, but rather in the number of lives lost and lives crippled in service to America by its veterans. With the exception of the memorial obligation to those who lost their lives in service to their country; the American people have no greater debt than to the totally disabled veterans.

It is inherent to the constitutional authority and purpose of the Courts to independently safeguard those special rights of totally disabled veterans which are created by the exercise of powers specific to the constitution.

America's totally disabled veterans who became disabled pursuant to the Constitutional power of Congress to declare war did so in anticipation of receiving those rights guaranteed by the United States Constitution. These constitutional guarantees extend beyond those acquired in merely being born or naturalized as an American and are specific to those totally disabled veterans who paid dearly for said rights. These constitutional guarantees are derived from an *implied contract* of which *Chief Justice Marshall* spoke in Gibbons v. Ogden, *12 Wheat., 341.* A citizen who defends the constitution in time of war is guaranteed the rights within the constitution. "The Government must make full restitution for the sacrifice". *United States v. Russell*, supra. These are those stipulations which honest, fair and just men would have made. The constitutional guarantees (rights) of totally disabled veterans are inherent to their status as totally disabled veterans.

The exercise of the war powers is subject to the guarantees of the Fifth Amendment. *Hamilton v. Kentucky Distillers & Warehouse Co.*, 251 U.S. 146 (1919)(citing *United States v. Russell*, S.C.,13 Wall. 623, 627). The exercise of war powers by the Government did impose substantial pain and sacrifice upon the lives and liberties of totally disabled veterans which remains with them for the remainder of their lives; as does the special relation to the Government and the debt of the American public. The guarantees of the Fifth Amendment attach to the continuing

liability for those sacrifices which cannot be made whole and provide recourse to the totally disabled veteran for additional injuries which sicken the heart, soul and conscious of America.

The Supreme Court is called upon to recognize an implied promise (obligation) of the constitution guaranteeing a right specific to the status of totally disabled veterans. The implied promise (obligation) exists within the constitution and was created by the exercise of powers specific to the constitution. The Supreme Court is also called upon to recognize a specific Fifth Amendment right inherent to status of America's one hundred seventy thousand totally disabled veterans. They have a constitutional right not to be judicially profiled and subjected to the abuse of judicial authority by the Courts in complaints of threats of physical injury by the Government.

Recognition of the constitutional obligation conferring a right specific to totally disabled veterans is presented as question number one. As the Supreme Court recognized the constitutional obligation (implied promise) to a Fifth Amendment right in *United States v. Russell*, supra; so must the Supreme Court in the case of totally disabled veterans.

Based upon the standards established by the Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), totally disabled veterans have an inherent constitutional right to procedural due process in the protection of Fifth Amendment interests under the United States Constitution.

2. **The instant complaint is a claim of constitutional limitation directed to the judicial abuse of Blough's inherent constitutional right to procedural due process by the Courts. As in the case of *United States v. Lee*, 106 U.S. 196 (1882); the instant cause of action "represents a specific application of the constitutional exception to the doctrine of sovereign immunity", *Larson v. Domestic & Foreign Commerce Corporation*, 337 U.S. 682 (1949).**

"Under our system (of government) the people are the sovereign". *United States v. Lee*,supra. Since the Act of May 8, 1792 the sovereign has honored an implied contract as a nation to protect and provide for those who have borne the burden of war and the Supreme Court has recognized constitutional obligations founded upon the exercise of the war powers clause of the Constitution. *Arver v.United States*, supra; *United States v. Russell*, supra; *Hamilton v. Kentucky Distillers & Warehouse Co., supra.* The sovereign; which has no greater living obligation than to protect the inherent constitutional rights of totally disabled veterans, is without immunity to this claim of constitutional limitation directed to the judicial power of the Federal courts.

"It is argued that the principle of sovereign immunity is an archaic hangover not consonant with modern morality and that it should therefore be limited wherever possible. There may be substance in such a viewpoint as applied to suits for damages". *Larson v.Domestic & Foreign Commerce Corporation*, supra. The Supreme Courts hesitation to entertain suits for specific relief in *Larson v. Domestic & Foreign Commerce Corporation* is absent in this suit for damages directed to the sovereign.

Blough made seven affirmative allegations of constitutional limitations upon the Courts' powers and made claim that the Courts' actions amounted to an unconstitutional taking by the sovereign. This complaint provides a modern example of "a specific application of the constitutional exception to the doctrine of sovereign immunity". *Larson v. Domestic & Foreign Commerce Corporation*, at 696. (App. at 40).

> "Under our constitutional system, certain rights are protected against government action and, if such rights are infringed by the actions of officers of the Government, it is proper that the courts have the power to grant relief against those actions. But in the absence of a **claim of constitutional limitation**, the necessity of permitting the Government to carry out its functions unhampered by direct judicial intervention outweighs the possible disadvantage to the citizen in being relegated to the recovery of money damages after the event." *Larson v. Domestic & Foreign Commerce Corporation*, supra. (App. at 16).

> "The evils which it is suggested may arise from interference of courts with the exercise of powers essential to government, are illusory, and are insignificant in comparison with the proposition that no relief can be granted when it is asserted that the United States has authorized the wrong." *United States v. Lee*, supra. (App. at 11).

The constitutional exceptions to the doctrine of sovereign immunity encompass those actions of the sovereign which sicken the heart, soul and conscious of America. Blough came to the Courts in June 1989 as a totally disabled veteran complaining of threats of physical injury in the employ of the Federal

Government (App. at 23-24). The continuous and abusive response of the Courts have been to summarily ignore the facts and law as presented with the intent to deprive Blough of the procedural due process right for which he paid dearly in Vietnam. The actions of the sovereign sicken the heart, soul and conscious of America.

Interference with the actions of the Courts is warranted in that the Courts have committed the wrong. In the case at point, Blough's inherent constitutional rights (guarantees) were created by actions of the sovereign. The sovereign may not seek immunity from violating an obligation of its own making.

3. **It is constitutionally void for the Courts to substitute themselves for the jury or otherwise rule upon their own liability in the absence of sovereign immunity.**

The defendant district court's response to the instant complaint (App at 10-37) was limited to the following Order (App at 3-4) and is reflective of the continuing judicial abuse of Blough's Fifth Amendment procedural due process right as a named defendant substitutes itself for the jury. The actions of the defendant district court continue to epitomize "the play and action of purely personal and arbitrary power" which is not within the definition of "due process of law", *Dent v. State of West Virginia*, 129 U.S. 114 (1889).

> "The Court having reviewed the Complaint and being otherwise fully advised in the premises,
>
> FINDS as follows:

The complaint must contain, inter alia, 'a short and plain statement of the claim showing that the pleader is entitled to relief.' FED.R.CIV.P.8(a)(2). Although a plaintiff is not required to set forth an intricately detailed description of the asserted basis for relief, it is required that the pleadings 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.' Conley v. Gibson, 355 U.S. 41, 47 (1957).

While pro se pleadings are to be construed liberally, Haines v. Kerner, 404 U.S. 519 (1972), the Plaintiff's Complaint fails to assert any discernible basis for the relief sought against any named defendant. The Court therefore finds that the action in its present form is frivolous under 28 U.S.C. Section 1915(e)(2)(B). The petition lacks an arguable basis in law or in fact and even liberally construed, is based on an indisputably meritless legal theory. See Neitzke v. Williams, 490 U.S. 319 (1989)."

BLOUGH'S RESPONSE

"The statute accords judges not only the authority to dismiss a claim based upon an **indisputably meritless legal theory,** but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose **factual contentions are clearly baseless.** Examples of the former class are claims against which it is clear that the defendants are immune from suit ... and claims of infringement of a legal interest which clearly does not exist." *Neitzke v. Williams*, supra. at 329.

The notification provided to the Courts' in the instant litigation not only met, but exceeded the

requirements of *Baldwin County Welcome Center v. Brown*, 446 U.S. 151 (1984) citing Fed. Rule Civ. Proc. 8(a)(2), *Conley v. Gibson*, 355 U.S. 41, 47 (1957), and *Coon v. Georgia Pacific Corp.*, 829 F.2d 1563, 1569 (11th Cir. 1987) (App at 10-37). The actions describing when, how, to whom, and with what results were spelled out in great detail within the initial complaint (App at 10-37); including, but not limited to the disabled veteran status and physical disabilities of Blough, extensive legal arguments in support of the three questions presented within this appeal, seven detailed allegations of judicial abuse by the Courts, and a very extensive narrative describing the facts providing evidence of judicial abuse in the prior litigation (to which the Order (App at 1-2) of the Chief Judge for the defendant district court was directed).

The factual contentions were not baseless in that the Chief judge for the defendant district court did review the actual court record in the prior litigation in conjunction with the instant complaint and find that Bloughs request for case reassignment based upon "allegations of deliberate and intentional denial of due process by the named defendants" (App at 43-45) "to be well-taken" (App at 1-2). There are no indications that the reassigned trial judge made such an inquiry or even noted the Order of the Chief Judge (App at 1-2) within the record.

Blough did state twelve times within the instant complaint (App at 12-20) that his constitutional right as a totally disabled veteran to procedural due process was denied by the Courts in a claim for damages. The Courts were well advised as to the nature of Blough's claim and the grounds upon which it was based. Allegation number five states that "the deprivation of procedural due process by the Courts in the initial and subsequent litigation, did deny plaintiff his

constitutional right to have the Government answer to the cause of action for damages in the claim of Fifth Amendment liberty interest violations" (App at 19). Blough went on to state that "the Fifth Amendment to the Constitution does place limitations upon the judicial power of the Courts in that no person shall be deprived of life, liberty, or property without due process of law. The Supreme Court has held that a cause of action for damages is a property right, and thus cannot be taken without due process. *Mullane v. Central Hanover Bank & Trust Co.*, supra." (App at 15). The legal theory which the defendant district court characterized as "undisputably meritless", originated with the United States Supreme Court. The Eleventh Circuit has chosen to ignore the Supreme Court's legal precedent in *Mullane v. Central Hanover Bank & Trust Co.*, supra. for the purpose of denying due process to Blough's complaint of constitutional limitation. The Eleventh Circuit has also, for the third time, taken it upon itself to assume that it is frivolous to allege that totally disabled veterans have a constitutional right to procedural due process in complaints of threats of physical injury by the Federal Government. Blough's complaint, which is neither "frivolous" nor "based upon an undisputably meritless legal theory", is properly accepted by the Supreme Court based upon the consistent abuse of judicial power by the defendant district court.

The following comments, law, and allegations are taken from the complaint and further demonstrate that the cause of action presented to the district court was neither frivolous nor based upon an indisputably meritless legal theory:

> "This cause of action addresses the *special* right of totally and permanently disabled veterans to appear and be heard by the Courts in complaints

> of threats of physical injury by the Government. It is difficult to imagine a claim more deserving of the Fifth Amendment right to procedural due process. It is unconscionable that the Government, in the capacity of the named defendants', has summarily deprived a totally and permanently disabled veteran of the right to procedural due process in a Federal cause of action. (App. at 12-13).
>
> The framers of the Constitution and the forty-two million Americans who served during periods of war would be appalled by a Federal Judiciary which intentionally creates a judicial barrier (*res judicata)* depriving a totally and permanently disabled veteran (plaintiff) of the *opportunity to be heard* in both a complaint of Fifth Amendment violations by the Government and the conflict between the exclusive remedy inferred by the Supreme Court in *Brown v. General Services Administration,* 425 U.S. 830, 836 (1976) and the statutory exception provided to veterans under section 712 Title VII of the Civil Rights Act of 1964, as amended. The specific allegations forming the basis for this cause of action are presented in item number five below. (App. at 13).

Blough made seven affirmative allegations of constitutional limitations upon the Courts' powers and made claim that the Courts' actions amounted to an unconstitutional taking by the sovereign.

ALLEGATIONS (App. at 17-20, 38-39)

> "The named Courts did not act independently to protect the *special* rights of plaintiff in the initial or subsequent litigation and are therefore named as defendants' in the current litigation.

ALLEGATION NUMBER ONE

The basis of this federal claim does create a cause of action for money damages in that the basis in itself can fairly be interpreted as mandating compensation for the damage sustained. This federal claim is based upon the violation of an implied contract of the sovereign conferring a constitutional right to procedural due process which is "so rooted in the traditions and conscience of our people as to be ranked as fundamental", *Palko v. State of* Connecticut, 302 U. S. 319 (1937). The constitutional right is *indebitatus assumpsit* to the totally and permanently disabled veteran whose status is inherent to the constitutional power of Congress to declare war. *Arver v. United States,* supra.

The Courts are liable for the abuse of constitutional powers in complaints of Fifth Amendment rights violations by totally and permanently disabled veterans. A constitutional right is fundamental if it is "preservative of all rights". *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Constitution mandates that the Courts afford totally and permanently disabled veterans meaningful *opportunity to be heard* in specific allegations of Fifth Amendment substantive due process violations by the Government. The Courts have denied a fundamental constitutional obligation of "We, the people of the United States" to a totally and permanently disabled veteran.

ALLEGATION NUMBER TWO

The judicial conduct of the Courts in the initial litigation was deliberately indifferent to plaintiff's

Fifth Amendment procedural due process rights. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Collins v. City of Harker Heights, TEX.*, 503 U.S. 115 (1992).

ALLEGATION NUMBER THREE

The Courts did abandon justice and reason in the subsequent litigation and intentionally deprive a totally and permanently disabled veteran of his constitutional guarantee of fair procedure in connection with the deprivation of a Fifth Amendment liberty interest by the Government.

The finding of *res judicata* in the subsequent litigation was a deliberate act based upon intentional misrepresentations by the Courts for the purpose of depriving plaintiff of procedural due process in the federal cause of action and question of law stated below.

ALLEGATION NUMBER FOUR

The federal cause of action (stated below) did appear affirmatively on the face of the record, was raised and presented for decision at all stages of the initial and subsequent litigation. Plaintiff was deprived of his opportunity to be heard in the initial and subsequent litigation of a specific legal right, (federal cause of action and question of law stated below), which was judicially independent of the judgment rendered in the complaints under Title VII Section 717 of the Civil Rights Act of 1964, as amended and the Rehabilitation Act of 1973, as amended, based upon the statutory exception under Title VII Section 712 of the Civil Rights Act of 1964, as amended and the findings of the Supreme Court in *Washington v. Davis*, 96 S. Ct. 2040 (1976).

There was no "final" determination by the Courts as to plaintiff's complaint of constitutional tort in the initial litigation and therefore the judgment as *res judicata* in the subsequent litigation was an abuse of constitutional power. *Hovey v. Elliott*, 167 U.S. 409 (1897); *Southern Pacific R. Co. v. United States*, 18 S. Ct. at 27 (1897).

ALLEGATION NUMBER FIVE

The court record in the initial litigation and subsequent litigation clearly demonstrates that plaintiff met the required procedures and presented his claim with the proper pleadings as to be afforded the opportunity to be heard. The Courts chose to ignore their own procedures and precedents to deprive a totally and permanently veteran of the *opportunity* to be heard. The Courts buried plaintiff's constitutional cause of action and related question of law under the shroud of "moot" and "*res judicata*"; when in fact neither doctrine applied. The actions of the Courts epitomize "the play and action of purely personal and arbitrary power" which is not within the definition of "due process of law", *Dent v. State of West Virginia*, 129 U.S. 114 (1889).

The deprivation of procedural due process by the Courts in the initial and subsequent litigation, did deny plaintiff his constitutional right to have the Government answer to the cause of action for damages in the claim of Fifth Amendment liberty interest violations.

ALLEGATION NUMBER SIX

The Supreme Court did exceed its constitutional authority and usurp the authority of Congress in *Brown v. General Services Administration*, 425 U.S. 830, 836 (1976). The exclusive remedy inferred by the Supreme Court in *Brown v. General Services Administration*, supra. has deprived those veterans in the employ of the Federal Government of their constitutional rights which are excepted from the Supreme Courts ruling by statute under Title VII section 712 of the Civil Rights Act of 1964, as amended. The deliberate indifference of the Courts to address this question of law in the initial and subsequent litigation was an abuse of constitutional power affecting the constitutional rights of millions of veterans in the employ of the Federal Government.

ALLEGATION NUMBER SEVEN

The facts as presented reflect upon the abuse of judicial power by the named defendants. This Fifth Amendment complaint of constitutional limitation will fail if plaintiff's Seventh Amendment right to trial by jury is denied or otherwise nullified by defendants. It is constitutionally void for the defendants to substitute themselves for the jury or otherwise rule upon their own liability."

The defendant district court did not address the cause of action asserted in the complaint (App at 12-17), the constitutional right asserted (App at 12-17), the waiver of sovereign immunity (App at 12-17), nor the absence of judicial authority (App at 10-12); but rather chose to base its actions solely upon the words *pro se*, frivolous, and meritless as justification for the defendant district court's actions. The defendant

district court chose a personal and arbitrary determination of frivolous as the basis for dismissal (Title 28 section 1915(e)(2)(B)(i)); as opposed to the more specific "failure to state a claim upon which relief may be granted" (section 1915(e)(2)(B) (ii)) or "plaintiff seeks monetary relief against a defendant who is immune from such relief" (section 1915(e)(2)(B) (iii)), both of which were identified as indisputably meritless legal theories in *Neitzke v. Williams*, supra. at 329 and both of which were excepted from said classification within Blough's pleadings.

The Order by the defendant district court (App at 3-4) ignores the factual contentions within the complaint (App at 10-37) which were supported by the Order of the Chief Judge for the district court (App at 1-2) and the legal precedent by the Supreme Court providing basis to the instant complaint (*Mullane v. Central Hanover Bank & Trust Co.*, supra.) (App at 15). The dispositive Order by the defendant district court does <u>again</u> reflect upon " the play and action of purely personal and arbitrary power" which is not within the definition of "due process of law". *Dent v. State of West Virginia*, supra. It is constitutionally void for the Courts to substitute themselves for the jury or otherwise rule upon their own liability in the absence of sovereign immunity.

The issues presented in the complaint are of public importance and responsibility. The instant complaint (App. at 10-37) was filed with demand for jury trail and amended, as a matter of right, to request that all dispositive motions be deferred to Blough's Seventh Amendment right to trial by jury. (App. at 38-42). The liability of the Courts' for their actions is properly determined *by the people.*

CONCLUSION

A positive response to the three questions of law presented will not cause an undue burden upon the Federal Judiciary. The right sought to be recognized is specific and constitutionally directed to a select group; waiver of sovereign immunity requires actions by the Government which sicken the heart, soul and conscious of America ; and it is justly unconstitutional for the Federal courts to determine their own liability in the absence of sovereign immunity.

The following facts, which were documented in the prior litigation; are judicially complete such as to provide standing for a decision on the questions of law presented:

1. Blough is a combat disabled veteran recognized as totally and permanently disabled by the Department of Veterans Affairs. Blough has two artificial legs and loss of use of one hand as a result of service in Vietnam (App at 46-47).

2. The administrative record in the current and prior litigation speaks to the abuse of judicial authority by the Courts. This fact was confirmed upon review of the administrative record by the Chief Judge for the defendant district court (App at 1-2).

The three questions presented are questions of constitutionally which are within the jurisdiction of the Supreme Court under the rules developed in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936). It is the established rule that the Supreme Court will not pass on constitutional questions unless such adjudication is unavoidable,

Spector Motor Service, Inc. v. McLaughlin, 323 U.S. 101; and the case may not be disposed of on "some other ground" as provided for in *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947). The defendant district and appellate courts have, in three consecutive suits for damages, deprived Blough of procedural due process by unlawfully creating "other grounds" for dismissal to avoid addressing the constitutional rights of totally disabled veterans. Adjudication by the Supreme Court is unavoidable to prevent further judicial abuse by the lower Courts.

Blough has complied with the judicial procedures and presented the law and facts in a complete and professional manner since the initial complaint was filed on June 29, 1998; however his constitutional right to procedural due process has been consistently abused by the Courts. Title 28 U.S.C. section 1654 provides that an individual may stand alone before the Courts. It is unlawful for the Courts to judicially profile an individual's rights based on pro se status. America's 170,703 totally disabled veterans have paid dearly for the right to stand alone and be treated fairly by the Courts. The Courts are statutorily and constitutionally liable for the judicial abuse presented within this complaint.

The early opinions by the Supreme Court brought a clarity and justice to constitutional status. A constitutional right is fundamental if it is "preservative of all rights". *Yick Wo v. Hopkins*, supra. The Constitution; and therefore the Supreme Court, exists because Americans were willing to die or become disabled for those guarantees within the Constitution. The legal and moral basis to the Constitution requires that the Courts not judicially abuse the fundamental constitutional right to due process of those Americans to whom this country owes its existence.

WHEREFORE, Blough respectfully requests that the United States Supreme Court:

1. Grant the writ in advance of judgment in the Court of Appeals due to the national importance of the questions of law presented, the claim of constitutional limitation to the abuse of judicial authority by the lower Courts, and the constitutional uncertainty of the appellate court's authority to rule upon its own liability in the absence of sovereign immunity; and

2. Vacate the Order of the district court and remand the case to the lower courts with proper instruction and positive resolution to these questions of law which are of national significance in addressing the constitutional obligation to protect a specific Fifth Amendment right of America's one hundred seventy thousand totally disabled veterans.

Respectfully submitted.

Melvin E. Blough pro se

Melvin E. Blough
803 Tomahawk Trail
Brandon, FL 33511
(813) 651-3158

APPENDIX

TO THE PETITION FOR WRIT OF CERTIORARI

No.

In The

Supreme Court of the United States

Melvin E. Blough,

Petitioner

v.

United States of America,
Supreme Court of the United States,
William H. Rehnquist, Chief Justice of the Supreme Court, United States Court of Appeals for the Eleventh Circuit, United States District Court Middle District of Florida Tampa Division,

Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT IN THE ABSENCE OF JUDICIAL PROFILING BY THE SUPREME COURT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED

02 MAR-1 AM 10:03

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

MELVIN E. BLOUGH,
Plaintiff,

vs. CASE NO. 8:02-CIV-194-T-24-TGW

UNITED STATES OF AMERICA,
Et al.,
Defendants.

_____/

ORDER

This cause is before the Court on the plaintiff's "Motion for Reassignment of Case Directed to Elizabeth A. Kovachevich as Chief Judge" (Docket No. 4). The undersigned has reviewed the three cases filed in this court by the plaintiff, the instant case, Blough v Rubin, Case No. 8:98-CIV-1358-T-24, Blough v Department of the Treasury, Case No. 8:00-CIV-1631-T-26, and finds the plaintiff's request to be well-taken. Accordingly, it is

ORDERED that the motion for reassignment (Docket No. 4) be **granted** and the Clerk of Court is **directed** to reassign this case by random draw to another district judge, except that Judge Lazzara shall not be assigned to the case.

DONE and ORDERED in Chambers, in Tampa, Florida, this 1st day of March, 2002.

"S/ELIZABETH A. KOVACHEVICH"
ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to: All parties and counsel of record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
02 APR 12 AM 10:02
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

MELVIN E. BLOUGH,

Plaintiff(s),

vs. **CASE NO. 8:02-CIV-194-T-27TGW**

UNITED STATES OF AMERICA, SUPREME COURT OF THE UNITED STATES, WILLIAM H. REHNQUIST, CHIEF JUSTICE OF THE SUPREME COURT, UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION,

Defendant(s).

_____/

ORDER

THIS CAUSE came on to be considered on Plaintiff's *pro se* Complaint with Demand for Jury Trial (Dkt. 1). The Court having reviewed the Complaint and being otherwise fully advised in the premises, **FINDS** as follows:

"A civil action is commenced by filing a complaint with the court." FED.R.CIV.P.3. The complaint must contain, inter alia, "a short and plain statement of the claim showing that the pleader is entitled to relief." FED.R.CIV.P.8(a)(2). Although a plaintiff is not required to set forth an intricately detailed description of the asserted basis for relief, it is required that the pleadings "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957). While pro se pleadings are to be construed liberally, Haines v. Kerner, 404 U.S. 519 (1972), the Plaintiff's Complaint fails to assert any discernible basis for the relief sought against any named defendant. The Court therefore finds that the action in its present form is frivolous under 28 U.S.C. Section 1915(e)(2)(B). The petition lacks an arguable basis in law or in fact and even liberally construed, is based on an indisputably meritless legal theory. See Neitzke v. Williams, 490 U.S. 319 (1989). Accordingly, it is

ORDERED AND ADJUDGED:

1. This cause is **DISMISSED.**

2. Any pending motions are DENIED as moot.

3. The Clerk is directed to close this case.

DONE AND ORDERED in chambers this 11th day of April, 2002.

"S/JAMES D. WHITMORE"
JAMES D. WHITMORE
United States District Judge

Copies to:
Counsel and Pro Se Parties of Record
Law Clerk

CONSTITUTIONAL PROVISIONS, PUBLIC LAWS, STATUTES AND RULES INVOLVED

CONSTITUTION OF THE UNITED STATES

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article 1. section 8. The Congress shall have power -

To declare war:

To raise and support armies:

Article 3. section 2, clause 1. Jurisdiction of Courts

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, ...to Controversies to which the United States shall be a Party ...

AMENDMENTS TO THE CONSTITUTION

The Fifth Amendment to the United States Constitution provides in part that "no person shall be ... deprived of life, liberty, or property, without due process of law ...." U.S. Const. amend V.

The Seventh Amendment to the United States Constitution provides in part that "in Suits at common law, the right of trial by jury shall be preserved ...." U.S. Const. amend VII.

PUBLIC LAW 85-857
(Sept. 2, 1958)
"Veterans' Benefits"

Title 38 U.S.C., Part II, Chapter 11:

Compensation for Service-Connected Disability or Death.

Subchapter II - Wartime Disability Compensation

Sec. 310. Basic entitlement. For disability resulting from personal injury suffered or disease contacted in line of duty..... in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled ..... compensation as provided in this subchapter.

Sec. 314. Rates of wartime disability compensation. For the purpose of section 310 of this title -

(j) if and while the disability is rated as total the monthly compensation shall be $225;

TITLE 38 UNITED STATES CODE
(2000)
Veterans Benefits
Part II, Chapter 11:

Compensation for Service-Connected Disability or Death.

Subchapter II - Wartime Disability Compensation.

Sec. 1110. Basic entitlement. For disability resulting from personal injury suffered or disease contracted inline of duty .... in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled ..... compensation as provided in this subchapter...

Sec. 1114. Rates of wartime disability compensation. For the purpose of section 1110 of this title -

(j) if and while the disability is rated as total the monthly compensation shall be $2,036;

STATUTES

TITLE 28 UNITED STATES CODE

Judiciary and Judicial Procedure

Section 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Section 1291. Final decisions of district courts

The courts of appeal ..... shall have jurisdiction of appeals from all final decisions of the district courts of the United States...

Section 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Section 1654. Appearance personally or by counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel.

Section 2101. Supreme Court; time for appeal or certiorari; docketing; stay.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 10. Considerations Governing Review on Certiorari

A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) A United States court of appeals .... has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power...

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and require immediate determination in this Court. See 28 U.S.C. section 2101(e).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

02 FEB-4 PM 1:11

Melvin E. Blough,

Plaintiff

Case No. 8:02-CIV-194-T-24TGW

v.

United States of America,
Supreme Court of the United States,
William H. Rehnquist, Chief Justice of the Supreme Court, United States Court of Appeals for the Eleventh Circuit, United States District Court Middle District of Florida Tampa Division,

Defendants.

COMPLAINT WITH DEMAND FOR JURY TRIAL

1. PLAINTIFF:

Melvin E. Blough
803 Tomahawk Trail
Brandon, FL 33511

2. DEFENDANTS:

United States of America,
Supreme Court of the United States, William H. Rehnquist, Chief Justice of the Supreme Court, United States Court of Appeals for the Eleventh

Circuit, United States District Court Middle District of Florida Tampa Division,
Office of the Clerk of the Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

3. JURISDICTION:

The evils which it is suggested may arise from interference of courts with the exercise of powers essential to government, are illusory, and are insignificant in comparison with the proposition that no relief can be granted when it is asserted that the United States has authorized the wrong. *United States v. Lee*, 106 U.S. 196 (1882).

No continuing relation between the Federal Government (hereafter "Government") and a citizen is more distinctively federal in character than that between it and the totally and permanently disabled veteran. The scope, nature, implied contracts and reciprocal obligations of the relation are derived from the constitution, are governed by federal authority, have been the subject of Congressional recognition since the inception of the Republic. The Government has the exclusive power to establish and define the relation by virtue of its military and other powers (including the powers of Congress to 'provide for the common Defence,' 'To declare War,' 'raise and support Armies,' and 'make all laws which shall be necessary and proper for carrying into execution the foregoing powers,' U.S. Const., Art. I, section 8).

The Supreme Court has recognized the authority of the Government to cause its citizens to become disabled veterans and compel the inception of said relationship as essential to "the very conception of a just government and its duty to the citizen" pursuant

to the constitutional authority of Congress to declare war. *Arver v. United States*, 245 U.S. 366 (1918). It is inherent in the constitutional authority and purpose of the named defendants' (hereafter "Courts") to independently safeguard those *special* rights which are created by the exercise of powers specific to the constitution.

Title 28 section 1331 of the United States Code provides for federal jurisdiction over the subject matter of this complaint which arose under Article I. Section 8, cl. 11, 12, 18 and Article III. Section 2 of the Federal Constitution in concert with the Fifth Amendment to the Constitution.

Article III. Section 1 of the Constitution limits judicial power in this complaint to those Courts whose judicial misconduct is the subject matter of the complaint. Justice and reason require that plaintiff's request for trial by jury be honored by this court.

4. CAUSE OF ACTION NEGATING CLAIM TO SOVERIGN IMMUNITY:

The "national debt" is not measured in dollars, but rather in the number of lives lost and lives crippled in service to America by its veterans. With the exception of the memorial obligation to those who lost their lives in service to their country; the American people have no greater debt than to the totally and permanently disabled veterans.

This cause of action addresses the *special* right of totally and permanently disabled veterans to appear and be heard by the Courts in complaints of threats of physical injury by the Government. It is difficult to imagine a claim more deserving of the Fifth Amendment right to procedural due process. It is unconscionable that the Government, in the capacity

of the named defendants', has summarily deprived a totally and permanently disabled veteran of the right to procedural due process in a Federal cause of action.

The framers of the Constitution and the forty-two million Americans who served during periods of war would be appalled by a Federal Judiciary which intentionally creates a judicial barrier (*res judicata)* depriving a totally and permanently disabled veteran (plaintiff) of the *opportunity to be heard* in both a complaint of Fifth Amendment violations by the Government and the conflict between the exclusive remedy inferred by the Supreme Court in *Brown v. General Services Administration*, 425 U.S. 830, 836 (1976) and the statutory exception provided to veterans under section 712 Title VII of the Civil Rights Act of 1964, as amended. The specific allegations forming the basis for this cause of action are presented in item number five below.

Plaintiff was inducted into the United States Army and became a combat disabled veteran with two artificial legs and loss of use of one hand. Plaintiff is recognized by the Department of Veterans Affairs as totally and permanently disabled.

"The exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war declared by the great representative body of the people. It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need; and the right to compel it. In fact the duty of the citizen to render military services and the power to compel him against his consent to do so was expressly sanctioned by the Constitution of at least nine of the states, an illustration being afforded by the

following provision of the Pennsylvania Constitution of 1776: 'That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion toward the expense of that protection, and yield his personal service when necessary, or an equivalent thereof.'" *Arver v. United States*, supra.

Taking of private property by the Government in time of war: "Private rights, under such extreme and imperious circumstances (war), must give way for the time to the public good, but the Government must make full restitution for the sacrifice. ' A great mass of human transactions depend upon implied contracts which are not written, but grow out of the acts of the parties. In such cases the parties are supposed to have made those stipulations which, as honest, fair and just men, they ought to have made'. There can be no more comprehensive definition of an implied contract. It applies to governments as well as individuals, and determines the liabilities of each, with the same regard to justice and reason. *United States v. Russell*, S.C., 13 Wall., 623-632 (1871) (citing *Chief Justice Marshall*, *Gibbons v. Ogden*, 12 Wheat., 341). *Indebitatus assumpsit* is founded upon what the laws term an implied promise on the part of the defendant to pay what, in good conscience, he is bound to pay to the plaintiff, but the law will not imply a promise to pay unless some duty creates such an obligation". *United States v. Russell*, supra.

"The exercise of the war powers is (except in respect to property destroyed by military operations, United States v. Pacific Railroad, 120 U.S. 227, 239 (1887)) subject to the guarantees of the Fifth Amendment." *Hamilton v. Kentucky Distillers & Warehouse Co.*, 251 U.S. 146 (1919)(citing *United States v. Russell*, supra.).

The exercise of war powers by the Government did impose substantial pain and sacrifice upon the lives and liberties of totally disabled veterans which remains with them for the remainder of their lives; as does the special relation to the Government and the debt of the American public. As the Supreme Court recognized the constitutional obligation (implied promise) to Fifth Amendment rights in *United States v. Russell*, supra.; *Hamilton v. Kentucky Distillers & Warehouse Co.*, supra.; and *Jacobs v. United States*, 54 U.S. 27 (1933); so must the Courts in the case of totally and permanently disabled veterans, for the implied promise (obligation) exists within the constitution and was created by the exercise of powers specific to the constitution. The guarantees of the Fifth Amendment attach to the continuing liability for those sacrifices which cannot be made whole and provide recourse to the totally disabled veteran for additional injuries which sicken the heart, soul and conscious of America. Congress has provided wartime disability compensation and an extensive array of benefits under Public Law 85-857 (Title 38 U.S.C.) in recognition of the continuing obligation.

The Fifth Amendment to the Constitution does place limitations upon the judicial power of the Courts in that no person shall be deprived of life, liberty, or property without due process of law.

The Supreme Court has held that a cause of action for damages is a property right, and thus cannot be taken without due process. "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that the deprivation of life, liberty or property by adjudication be proceeded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

"Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. What the Constitution does require is 'an *opportunity* * * * granted at a meaningful time and in a meaningful manner,' *Armstrong v. Manzo, 85 S. Ct. 1187 (1965),* 'for [a] hearing appropriate to the nature of the case. In short, ' within the limits of practicability,' a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause. *Boddie v. Connecticut*, 91 S. Ct. 780, 786 (1971) (citing *Mullane v. Central Hanover Bank & Trust Co*, supra).

"Under our constitutional system, certain rights are protected against government action and, if such rights are infringed by the actions of officers of the Government, it is proper that the courts have the power to grant relief against those actions. But in the absence of a **claim of constitutional limitation**, the necessity of permitting the Government to carry out its functions unhampered by direct judicial intervention outweighs the possible disadvantage to the citizen in being relegated to the recovery of money damages after the event." *Larson v. Domestic & Foreign Commerce Corporation*, 337 U.S. 682 (1949).

"Under our system (of government) the *people* are the sovereign". *United States v. Lee*, supra. Since the Act of May 8, 1792 the sovereign has honored an implied contract as a nation to protect and provide for those who have borne the burden of war and the Supreme Court has recognized constitutional obligations founded upon the exercise of the war powers clause of the Constitution. *Arver v. United States*, supra.; *United States v. Russell*, supra.; *Hamilton v. Kentucky Distillers & Warehouse Co.*,. The sovereign; which has no greater obligation than to protect the constitutional rights of totally and permanently

disabled veterans, is without immunity to this claim of constitutional limitation directed to the judicial power of the Courts.

5. ALLEGATIONS:

The named Courts did not act independently to protect the *special* rights of plaintiff in the initial or subsequent litigation and are therefore named as defendants' in the current litigation.

ALLEGATION NUMBER ONE

The basis of this federal claim does create a cause of action for money damages in that the basis in itself can fairly be interpreted as mandating compensation for the damage sustained. This federal claim is based upon the violation of an implied contract of the sovereign conferring a constitutional right to procedural due process which is "so rooted in the traditions and conscience of our people as to be ranked as fundamental", *Palko v. State of* Connecticut, 302 U. S. 319 (1937). The constitutional right is *indebitatus assumpsit* to the totally and permanently disabled veteran whose status is inherent to the constitutional power of Congress to declare war. *Arver v. United States,* supra.

The Courts are liable for the abuse of constitutional powers in complaints of Fifth Amendment rights violations by totally and permanently disabled veterans. A constitutional right is fundamental if it is "preservative of all rights". *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Constitution mandates that the Courts afford totally and permanently disabled veterans meaningful *opportunity to be heard* in specific allegations of Fifth Amendment substantive due process violations by the Government. The Courts have denied a fundamental constitutional obligation of

"We, the people of the United States" to a totally and permanently disabled veteran.

ALLEGATION NUMBER TWO

The judicial conduct of the Courts in the initial litigation was deliberately indifferent to plaintiff's Fifth Amendment procedural due process rights. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Collins v. City of Harker Heights, TEX.*, 503 U.S. 115 (1992).

ALLEGATION NUMBER THREE

The Courts did abandon justice and reason in the subsequent litigation and intentionally deprive a totally and permanently disabled veteran of his constitutional guarantee of fair procedure in connection with the deprivation of a Fifth Amendment liberty interest by the Government.

The finding of *res judicata* in the subsequent litigation was a deliberate act based upon intentional misrepresentations by the Courts for the purpose of depriving plaintiff of procedural due process in the federal cause of action and question of law stated below.

ALLEGATION NUMBER FOUR

The federal cause of action (stated below) did appear affirmatively on the face of the record, was raised and presented for decision at all stages of the initial and subsequent litigation. Plaintiff was deprived of his opportunity to be heard in the initial and subsequent litigation of a specific legal right, (federal cause of action and question of law stated below), which was judicially independent of the judgment rendered in the complaints under Title VII Section 717 of the Civil Rights Act of 1964, as amended and the Rehabilitation

Act of 1973, as amended, based upon the statutory exception under Title VII Section 712 of the Civil Rights Act of 1964, as amended and the findings of the Supreme Court in *Washington v. Davis*, 96 S. Ct. 2040 (1976).

There was no "final" determination by the Courts as to plaintiff's complaint of constitutional tort in the initial litigation and therefore the judgment as *res judicata* in the subsequent litigation was an abuse of constitutional power. *Hovey v. Elliott*, 167 U.S. 409 (1897); *Southern Pacific R. Co. v. United States*, 18 S. Ct. at 27 (1897).

ALLEGATION NUMBER FIVE

The court record in the initial litigation and subsequent litigation clearly demonstrates that plaintiff met the required procedures and presented his claim with the proper pleadings as to be afforded the opportunity to be heard. The Courts chose to ignore their own procedures and precedents to deprive a totally and permanently veteran of the *opportunity* to be heard. The Courts buried plaintiff's constitutional cause of action and related question of law under the shroud of "moot" and "*res judicata*"; when in fact neither doctrine applied. The actions of the Courts epitomize "the play and action of purely personal and arbitrary power" which is not within the definition of "due process of law", *Dent v. State of West Virginia*, 129 U.S. 114 (1889).

The deprivation of procedural due process by the Courts in the initial and subsequent litigation, did deny plaintiff his constitutional right to have the Government answer to the cause of action for damages in the claim of Fifth Amendment liberty interest violations.

ALLEGATION NUMBER SIX

The Supreme Court did exceed its constitutional authority and usurp the authority of Congress in *Brown v. General Services Administration*, 425 U.S. 830, 836 (1976). The exclusive remedy inferred by the Supreme Court in *Brown v. General Services Administration*, supra. has deprived those veterans in the employ of the Federal Government of their constitutional rights which are excepted from the Supreme Courts ruling by statute under Title VII section 712 of the Civil Rights Act of 1964, as amended. The deliberate indifference of the Courts to address this question of law in the initial and subsequent litigation was an abuse of constitutional power affecting the constitutional rights of millions of veterans in the employ of the Federal Government.

6. SUMMARY OF PRIOR LITIGATION AND FACTS PROVIDING BASIS TO INSTANT COMPLAINT:

Plaintiff filed the initial lawsuit on June 29, 1998, against the Government pursuant to Title VII of the Civil Rights Act of 1964, as amended (Case No. 98-1358Civ-T-24E). Plaintiff filed two motions with the district court; the first to amend the initial complaint to include a cause of action under the Rehabilitation Act of 1973, as amended and the second cause of action for deprivation of a Fifth Amendment liberty interest. On September 17, 1999 the district court did issue an Order pursuant to defendant's motion for summary judgment on the cause of action under Title VII of the Civil Rights Act of 1964, as amended. The initial paragraph of the Order did reference the motions to amend under the Rehabilitation Act of 1973 and the Fifth Amendment. The final paragraph of the Order provides for denial of the Title VII and Rehabilitation Act actions based upon the merits; and passive (without comment within the Order) denial as

moot "all other motions pending in this action" (including the claim of constitutional tort). Plaintiff appealed the moot ness of his Fifth Amendment claim to the appellate court (Case No. 99-13735), which entered a Judgment on May 9, 2000 acknowledging the Fifth Amendment claim; however affirming the district court's denial as moot and (as with the district court) remaining silent as to the basis for the court's action. The aforementioned proceedings are hereafter referred to as the "initial litigation".

Plaintiff returned to the district court and on August 8, 2000 did again file a Fifth Amendment complaint of constitutional tort against the Government (Case No. 8:00-CV-1631-T-26E) alleging those constitutional rights violations which were alleged in the initial litigation. By Order dated November 21, 2000 the district court did grant defendants' motion for summary judgment based upon the doctrine of *res judicata*. By Judgment dated May 22, 2001 the appellate court did affirm the district court (Case No. 00-16546). Plaintiff did appeal to the United States Supreme Court (Case No. 01-203) with the result that the petition for writ of certiorari was denied without comment October 1, 2001 and the petition for rehearing was denied without comment January 7, 2002. The aforementioned proceedings are hereafter referred to as the "subsequent litigation".

FACTS IN SUPPORT OF ALLEGATIONS

Federal Cause of Action

Totally disabled veterans have an inherent Fifth Amendment liberty interest which prohibits continuous acts of employment related threats of physical injury, discrimination and retaliation by the Federal Government.

This cause of action was initially presented by petitioner in the course of a district court hearing (Doc. 25, 32); in a motion to amend initial complaint (Doc. 97, 104); in response to Government's motion for summary judgment (Doc. 107); in the brief/ reply brief/petition for rehearing en banc of the appeal in the initial litigation; in the complaint as filed with the district court in the subsequent litigation (Doc. 1); in response to Government's motion for summary judgment (Doc. 10); in the brief/reply brief/petition for en banc consideration in the appeal ; and in the petition for writ of certiorari and petition for rehearing to the Supreme Court in the subsequent litigation. The Government, the district court (Doc. 111, 11), the appellate court, and the Supreme Court were silent to this cause of action in the initial and subsequent litigation.

Question of Law

Title VII section 712 of the Civil Rights Act of 1964, as originally enacted and as amended in 1972, states that "nothing contained in this title shall be construed to repeal or modify any *Federal*, State, territorial, or local *law creating special rights* or preference *for veterans*". In *Brown v. General Services Administration*, 425 U.S.830, 836 (1976) the Supreme Court held that "(Title VII) section 717 of the Civil Rights Act of 1964, as amended in 1972, provides the exclusive judicial remedy for claims of discrimination in federal employment."

Recognition of the constitutional cause of action as stated above provides a *special right* (under Title VII section 712 of the Civil Rights Act of 1964) of exception to the exclusive judicial remedy inferred by the Supreme Court in *Brown v. General Services Administration*, supra.

This question of law was initially presented by plaintiff in the course of a district court hearing (Doc. 25, 32); in the motion to amend the complaint (Doc. 97, 104); in the brief /reply brief/petition for rehearing en banc of the appeal in the initial litigation; and in response to Government's motion for summary judgment (Doc. 10); in the brief/reply brief/petition for en banc consideration in the appeal ; in the petition for writ of certiorari and petition for rehearing to the Supreme Court in the subsequent litigation. The district court (Doc. 111, 11), the appellate court, and the Supreme Court were silent as to this question of law in the initial or subsequent litigation. Government did rely, in its motion for summary judgment in the subsequent litigation (Doc. 8), upon the Supreme Court's determination that section 717 of Title VII of the Civil Rights Act of 1964, as amended, provides the exclusive judicial remedy for claims of discrimination in federal employment, *Brown v. General Services Administration*, 425 U.S. 830 (1976), and therefore; did assert that plaintiff had no legal basis to complain of violations under the Fifth Amendment to the Constitution. The Government did also claim the limitations of *Brown v. General Services Administration*, supra, in the initial litigation within Government's motion (Doc. 99) in opposition to plaintiff's motion to amend the initial complaint (Doc.1) to include a claim of constitutional tort (Doc. 97, 104).

The complaint as initially filed with the district court on June 29, 1998 did encompass a claim of civil rights violations under Title VII of the Civil Rights Act of 1964, as amended (Doc.1). The notification provided to Government in the initial litigation not only met, but exceeded the requirements of *Baldwin County Welcome Center*, supra, *Coon v. Georgia Pacific Corp.*, supra, and *Conley v. Gibson*, supra. The actions describing when, how, to whom, and with what results

were spelled out in great detail within the initial complaint; including, but not limited to the disabled veteran status and physical disabilities of plaintiff, the threats of physical injury to plaintiff and the informal response/formal acceptance of said threats by the Government (Department of the Treasury and the Equal Employment Opportunity Commission).

At the conclusion of a preliminary injunction hearing (Doc. 32) plaintiff stated that the basis in his claim is that the Government violated his Fifth Amendment right to liberty with threats of physical injury. The court responded that "there is an emotional distress".

Prior to the preliminary injunction hearing plaintiff did timely file documentation (Doc. 25) which was subsequently entered into the court record with the consent of the Government. Among those documents was confirmation of plaintiff's status as a 100% permanent and totally disabled veteran, third-party confirmation of the physical threats against plaintiff (EEOC decision dated December 5, 1996 page 2), and the following statements by plaintiff: "As a 100% service-connected disabled veteran Plaintiff had a Constitutional right not to be threatened with physical injury under the analysis presented in *Washington v. Glucksberg,* 117, S. Ct. 2258 (1997); Title VII Section 712 of the Civil Rights Act of 1964 provides that 'nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans'; 'We have never held that the constitutional standard for adjudicating claims of invidious racial discrimination is identical to the standards applicable under Title VII, and we decline to do so today'. *Washington v. Davis*, 96 S. Ct. 2040 (1976)."

Plaintiff did motion the district court to amend the initial complaint (Doc.1) to bring action under the

Rehabilitation Act of 1973, as amended and the Americans with Disabilities Act of 1990 (Doc. 33).

Plaintiff did motion the district court to amend the initial complaint (Doc. 1) under Rule 15(a) of the Federal Rules of Civil Procedure to include a claim of action against Government for deprivation of a fundamental and protected liberty interest which exists within the Fifth Amendment to the Constitution (Doc. 97). Within this motion plaintiff did provide the following statements: "Under the analysis presented by the United States Supreme Court in Washington v. Glucksberg, 117 S. Ct. 2258 (1997) ; a one hundred percent (100%) physically disabled veteran has a fundamental Constitutional right not to be threatened, harassed and retaliated against by the same government which put him in harms way in Viet nam. Title VII of the Civil Rights Act of 1964 is not the exclusive remedy for Plaintiff in that Section 712 of the Act provides that 'nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans'."

The notification provided to Government in the motion to amend (Doc. 97) not only met, but exceeded the requirements of *Baldwin County Welcome Center*, supra, *Coon v. Georgia Pacific Corp.*, supra, and *Conley v. Gibson*, supra. The defendant was apprised of the substance of the allegation and the grounds upon which it rests. The actions describing when, how, to whom, and with what results were spelled out in great detail within the initial complaint (Doc. 1) and were "also the basis of this Fifth Amendment claim".

The issues proposed by the amended claim of constitutional tort (Doc. 97) were legal and required no additional discovery to posture them for adjudication.

Government did motion the court (Doc. 99) in opposition to plaintiff's "constitutional tort claims, alleging deprivation of his due process of law under the Fifth Amendment". Government's stated position was that a claim of constitutional tort was not available to plaintiff based upon the exclusive remedy inferred by the Supreme Court in *Brown v. General Services Administration*, supra.

Plaintiff did motion the court (Doc. 104) to file a memorandum of law in support of the motion to amend for a claim of constitutional tort (Doc. 97). The following legal arguments were provided in response to Government's motion in opposition: "Section 712 of Title VII of the Civil Rights Act of 1964 (USC Title 42, Chapter 21, Subchapter VI, section 2000e-11) provides that Title VII is not the exclusive remedy to Plaintiff who has been recognized by Defendant as a one-hundred percent (100%) disabled veteran. Section 712 of Title VII was not referenced in *Brown v. General Service Administration*, supra and therefore was not a fact in consideration by the Court. 'We have never held that the constitutional standard for adjudicating claims of invidious racial discrimination is identical to the standards applicable under Title VII, and we decline to do so today.' *Washington v. Davis,* supra."

In a memorandum (Doc. 105) authorized by Court Order to be filed in support of the motion to amend for action under the Rehabilitation Act of 1973, as amended (Doc. 33), plaintiff did reference the court to the pending "claim for deprivation of a fundamental and protected liberty interest which exists within the Fifth Amendment to the United States Constitution". Plaintiff did also reference said claim in plaintiff's response to defendant's motion for summary judgment (Doc. 107).

Defendants' motion for summary judgment (Doc. 75) and plaintiff's response (Doc. 107) were limited to the initial complaint under Title VII of the Civil Rights Act of 1964, as amended. Plaintiff did incorporate sworn depositions attesting to the threats of physical injury to Plaintiff.

The following statement is presented within the initial paragraph of the Order of the district court in the initial litigation (Doc. 111):

"This cause comes before the Court on defendant's Motion for Summary Judgment (Doc. No. 75). Plaintiff has filed a response in opposition (Doc. No. 107). Also before the Court is plaintiff's Motion to Amend Complaint (Doc. No. 33) and defendant's response in opposition (Doc. No. 36). **Plaintiff has also filed various papers which appear to be addressed to his Motion to Amend Complaint** and/or his response to defendant's Motion for Summary Judgment. **See Doc. Nos. 104** and 105."

Document 104 was a five page memorandum of law in support of plaintiff's motion the amend the initial complaint to include a claim of constitutional tort against the Government (Doc. 97) and was filed in response to the Government's motion in opposition to plaintiff's motion to so amend (Doc. 99). In referencing document 104 within the Order, the district court judicially involved plaintiff's claim of constitutional tort and the Government's response (Doc. 97, 99, 104).

The following statement is presented within the final paragraph of the Order of the district court in the initial litigation (Doc. 111):

"Accordingly, it is ORDERED AND ADJUDGED that defendant's Motion for Summary Judgment (Doc. No. 75) is GRANTED. The Clerk is instructed to CLOSE Case No. 98-1358-Civ.-T-24(E). Plaintiff's Motion to Amend Complaint (Doc. No. 33) is DENIED for the reasons set forth in this Order. **All other motions pending in this action are DENIED AS MOOT.**"

The judicial conduct of the district court in the initial litigation was deliberately indifferent to the constitutional rights of a totally and permanently disabled veteran.

Plaintiff, a disabled veteran with two artificial legs and loss of use of one hand, did appear before a Federal Court and claim a Fifth Amendment violation in that the Government threatened "to push him down a flight of stairs" (Doc. 32) and documented the threat (Doc. 25). The courts response was to summarily dismiss the claim as "emotional distress" (Doc. 32). None of America's one hundred and seventy thousand totally disabled veterans should be subject to such arrogance by a Federal Court.

The Order of the district court is flawed on its face, in that the initial paragraph involves a document (104) filed by plaintiff in support of the motion to amend for claim of constitutional tort (97) and in response to Government's motion in opposition to said motion (99); however the Order by the district court failed to adjudicate the motion to amend for the claim of constitutional tort (97,104).

The motion to amend for claim of constitutional rights violations (Doc. 97, 104) was not moot due to the exception pleaded to plaintiff under section 712 Title VII of the Civil Rights Act of 1964 and the differing legal standards referenced in *Washington v. Davis*, supra. No "final order" was issued "on the merits" of

plaintiff's claim of constitutional tort. The district court was silent as to the basis in its ruling that the federal cause of action was moot.

It is obvious the district court failed to review plaintiff's pleadings in the initial litigation in that the Order of the district court (Doc. 111) does not reference the motion to amend for constitutional tort (Doc. 97, 99, 104) which was prominent in plaintiff's pleadings. Review of the Order of the district court (Doc. 111) in conjunction with plaintiff's response to Government's motion for summary judgment (Doc. 107) provides further evidence that the district court did not review plaintiff's pleadings. The Order misrepresents the pleadings of both parties, creates an absurd scenario and then ridicules plaintiff for proposing said scenario.

Plaintiff did appeal the district court Order denying his claim of constitutional tort as moot. In opposition to the decision rendering the claim moot, plaintiff did argue the legal principles presented in *Sherman v. Hallbauer*, 455 F.2d 1236 (5th Cir. 1972); *Murphy v. Hunt*, 102 S. Ct. 1181 (1982) and *Sears, Roebuck and Co. v. Mackey*, 76 S. Ct. 895 (1956). Plaintiff also provided the appellate court with copies of all relevant motions filed with the district court (Doc. 1, 25, 32, 33, 97, 99, 104, 106, 107) and did contrast said motions with the Order of the district court (Doc. 111) demonstrating that no "final order" was issued "on the merits" of plaintiff's claim of constitutional tort and the claim was not moot.

Plaintiff did also argue the cause of action for constitutional tort (Doc. 97, 104) and the exceptions presented (i.e. Title VII section 712 of the Civil Rights Act of 1964, as amended; and *Washington v. Davis*, supra.) with legal support by *Washington v.*

Glucksberg, supra.; *Detroit Bank v. United States*, 63 S. Ct. 297; *Bolling v. Sharpe*, 74 S. Ct. 693 (1954); *Schneider v. Rusk* 84 S. Ct. 1187 (1964); *Yick Wo v. Hopkins*, 6 S. Ct. 1064; *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

The appellate court ruled summarily that "the district court did not abuse its discretion when it denied Blough's (plaintiff's) motion to amend his complaint"; however was silent as to the district court's basis in ruling the federal cause of action moot.

The Judgment by the appellate court provided acknowledgement that the federal cause of action (Doc. 97, 99, 104) appeared affirmatively on the face of the record and was raised and presented for decision in the initial litigation; however the silence as to the district court's basis in ruling the federal cause of action moot was an affirmation of the deliberate indifference by the district court.

Plaintiff returned to the district court and filed a second Fifth Amendment complaint of constitutional tort (Doc. 1) against the Government alleging the same cause of action for constitutional rights violations which were alleged in the initial litigation (Doc. 97, 104). The notification provided to Government in the subsequent litigation not only met, but exceeded the requirements of *Baldwin County Welcome Center*, supra, *Coon v. Georgia Pacific Corp.*, supra, and *Conley v. Gibson*, supra. As in the case of the initial complaint; the same actions describing when, how, to whom, and with what results were spelled out in great detail; including, but not limited to the disabled veteran status and physical disabilities of plaintiff, the threats of physical injury to plaintiff and the informal response/formal acceptance of said threats by the Government.

Plaintiff advised the district court of its failure in the initial litigation to address the allegations of constitutional rights violations which were presented as an amendment to the complaint of civil rights violations and were again before the court. Plaintiff also referenced the failure of the court in the initial litigation to address the merits of the complaint of constitutional tort under the standards required by the United States Supreme Court in *Washington v. Davis*, supra.

Government filed a motion for summary judgment (Doc. 8) based upon the assertions that plaintiff's action was barred by *res judicata* and Title VII of the Civil Rights Act of 1964 which provides the exclusive judicial remedy for claims of discrimination in federal employment (citing *Brown v. General Services Administration*, 96 S. Ct. 1961 (1976)). Government failed to reference the motion filed by Government in the initial litigation (Doc. 99) in opposition to plaintiff's motion to amend for constitutional tort (Doc. 97, 104).

In the response to Governments' motion for summary judgment (Doc. 10) plaintiff did argue in opposition to the assertion that the claim be denied as *res judicata* based upon the legal principles presented in *Murphy v. Hunt*, supra; *Sears, Roebuck and Co. v. Mackey*, supra; *United States v. Moser*, 45 S. Ct. 66 (1924); *Southern Pacific R. Co. v. United States*, 18 S. Ct. 18 (1897); *Cromwell v. County of Sac*, 94 U.S. 351 (1877); *Montana v. U.S.*, 99 S. Ct. 970 (1979); and *Washington v. Davis*, supra. Plaintiff did also provide the appellate court with copies of all relevant motions filed in the initial complaint (Doc. 1, 25, 32, 33, 97, 99, 104, 106, 107) and did contrast said motions with the Order of the district court (Doc. 111) in demonstrating that no "final order" was issued "on the merits" of plaintiff's claim of constitutional tort in the initial litigation and

therefore the doctrine of *res judicata* did not apply to the complaint of constitutional tort currently before the court nor was the claim moot in the initial litigation.

Plaintiff did also argue the cause of action for constitutional tort with legal support by *Washington v. Glucksberg*, supra.; *United States v. Gilman*, 74 S. Ct. 695 (1954) (citing *Detroit Bank v. United States*, supra.); *Currin v. Wallace*, 59 S. Ct. 379; *Steward Machine Co. v. Davis*, 57 S. Ct.(1883); *Ferguson v. Skrupa*, supra. Plaintiff did also argue in opposition to the Supreme Courts decision in *Brown v. General Services Administration*, supra. as a basis for denial in that section 712 of Title VII of the Civil Rights Act of 1964 provides that "nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans".

DISTRICT COURT OPINION (Doc. 11)

"As gleaned from the parties' submissions, the material facts are undisputed.

His (plaintiff's) only contention is that '[n]either the district court nor the appellate court have ruled on the merits of this complaint of constitutional tort... which was properly filed in conjunction with the initial complaint'.

Moreover, as the Plaintiff has conceded, the claim he asserts in this case was always a part of the claim he asserted in the prior case.*

*Even if this were not, it is manifestly clear from the record that the Plaintiff was well aware of this so-called **constitutional tort claim based on the Fifth Amendment at the very inception of the earlier**

case and, therefore could easily have raised it in that case.

** As the Defendants correctly observe, the parties to both suits are the Plaintiff and the United States.

*** Because the Court agrees that *res judicata* mandates the entry of summary judgment for the Defendants, it need not reach the alternative argument advanced by the Defendants for summary judgment.

The Defendants' Motion for Summary Judgment (Dkt. 8) is granted."

The statement by the district court that "as gleaned from the parties' submissions, the material facts are undisputed" is a misrepresentation by the court. The court chose to ignore the facts as presented by plaintiff and relied exclusively upon the limited and incomplete facts presented by Government in denying the complaint based upon *res judicata.*

The Opinion (Doc. 11) referenced the fact plaintiff complained of constitutional tort in the initial litigation and then went on to deny the complaint based upon *res judicata* because plaintiff failed to raise the constitutional tort claim in the initial litigation. The district court was in possession of plaintiff's motion to amend for claim of constitutional tort in the initial litigation (Doc. 97, 104), the Governments' motion in opposition (Doc. 99), and the Opinion of the district court (Doc. 111). The Opinion of the district court in the subsequent litigation (Doc. 11) intentionally chose to ignore these documents which did clearly present a federal cause of action (Doc. 97, 99, 104) which appeared affirmatively on the face of the record and was raised and presented for decision in the initial litigation; however was not

adjudicated by the Order of the district court (Doc. 111).

The deliberate indifference of the district court in the initial litigation (reference to "Doc. 104 as motion to amend complaint" with no further comment) is reflected within the Order by the court (Doc. 111). The intentional misrepresentations by the district court in the subsequent litigation is reflected within the Order issued by that court (Doc. 11). The statement within the district court Opinion (Doc. 11) that (plaintiff's) only contention is that '[n]either the district court nor the appellate court have ruled on the merits of this complaint of constitutional tort... which was properly filed in conjunction with the initial complaint'; followed by the statement that plaintiff failed to raise the claim of constitutional tort based upon the Fifth Amendment in the initial litigation was an intentional misrepresentation of the facts before the court (Doc. 97, 99, 104, 111) for the purpose of depriving plaintiff of due process of law.

Plaintiff did appeal the district court Order denying his claim of constitutional tort as *res judicata* based upon the following statement by the trail judge in the dispositive Order (Doc. 11) which reflects upon a continuing abuse of power by the courts in the myopic view of the facts presented (R1-10) in plaintiff's asserted right to due process of law:

> "Moreover, as the Plaintiff has conceded, the claim he asserts in this case was always a part of the claim he asserted in the prior case. Even if it were not, it is manifestly clear from the record that the Plaintiff was well aware of the so-called constitutional tort claim based on the Fifth Amendment at the very inception of the earlier case and, therefore, **could easily have raised it in that case.**"

In the response to the Order by the district court (Doc. 11) granting defendants' motion for summary judgment (Doc. 8) plaintiff did argue in opposition to the decision that the claim be denied as *res judicata* based upon the same legal principles presented in plaintiff's response to Government' motion for summary judgment (Doc. 10). Plaintiff did also provide the appellate court with copies of all relevant motions filed in the initial complaint (Doc. 1, 25, 32, 33, 97, 99, 104, 106, 107) and did contrast said motions with the Order of the district court (Doc. 111) in demonstrating that no "final order" was issued "on the merits" of plaintiff's claim of constitutional tort in the initial litigation and therefore the doctrine of *res judicata* did not apply to the complaint before the court.

Plaintiff did also argue the cause of action for constitutional tort and in opposition to the Supreme Courts decision in *Brown v. General Services Administration*, supra. as a basis for denial. Finally, plaintiff did argue that he had been denied his right to due process of law with legal support in *Boddie v. Connecticut*, supra; *Daniels v. Williams*, 106 S. Ct. 662, 665 (1986) (citing *Parratt v. Taylor*, 101 S. Ct. 1908 (1981)); *Armstrong v. Manzo*, 85 S. Ct. 1187, 1191 (1965); in that "a fundamental requirement of due process is the opportunity to be heard". *Grannis v. Ordean*, 34 S. Ct. 779, 783. Plaintiff was denied a full and fair opportunity to litigate in the initial litigation and therefore the doctrine of res judicata did not apply to the Order of the district court (R1-11).

The appellate court did summarily respond that "we have reviewed Blough's (plaintiff) complaint, the proceedings in the 1998 case as contained in the record, and all other relevant portions of the record. Having considered these documents together with the

parties' briefs, we find no reversible error. His 1998 case was decided against him by a final order on the merits by a court of competent jurisdiction. Blough's claim that the application of res judicata denies him due process has no merit, because **he had notice and an opportunity to be heard in the 1998 case."**

Plaintiff did appeal to the United States Supreme Court presenting the cause of action and the question of law presented on pages nine and ten of this complaint. The cause of action and the question of law were presented under the constitutional provisions of the War Powers Clause, art. 1, section 8, cl. 11, 12, 18; the Jurisdiction of Courts Clause, art 3, section 2, cl. 1; and the Fifth Amendment.

Plaintiff did also complain that the lower courts abused their constitutional authority in the denial of that process which is due the constitutional obligation and statutory exception as presented.

"The statutory exclusion provision of section 712 of Title VII of the Civil Rights Act of 1964, as amended, is compatible with the restrictions of section 717 of said Act. It is the blanket exclusive remedy of section 717 of the Act as inferred by the United States Supreme Court in *Brown v. General Services Administration*, supra, which is challenged based upon facts specific to this case. This is a case of first impression in addressing the exception of section 712 Title VII of the Civil Rights Act of 1964."

The United States Supreme Court did deny petitioner's petition for writ of certiorari and petition for rehearing without comment.

7. RELIEF:

WHEREFORE; the sovereign is without immunity to this claim of constitutional limitation directed to the judicial power of the named defendants'. Based upon the Courts alleged violations of plaintiff's procedural due process right and the obvious conflict of interest, it is requested that resolution of this complaint be deferred to plaintiff's Seventh Amendment right to trial by jury. Compensatory damages in the amount of twenty million dollars ($20,000,000) are sought.

"S/Melvin E. Blough" pro se

Melvin E. Blough
803 Tomahawk Trail
Brandon, FL 33511
(813) 651-3158

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

02 APR 15 PM 12:22

Melvin E. Blough

Plaintiff,

Case No. 8:02-CIV-194-T-27TGW

v.

United States of America,
Supreme Court of the United States, William H. Rehnquist, Chief Justice of the Supreme Court, United States Court of Appeals for the Eleventh Circuit, United States District Court Middle District of Florida Tampa Division,

Defendants,

AMENDMENT TO COMPLAINT AS A MATTER OF COURSE UNDER RULE 15(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

ALLEGATION NUMBER SEVEN

The facts as presented reflect upon the abuse of judicial power by the named defendants. This Fifth Amendment complaint of constitutional limitation will fail if plaintiff's Seventh Amendment right to trial by jury is denied or otherwise nullified by defendants. It is constitutionally void for the defendants to

substitute themselves for the jury or otherwise rule upon their own liability.

MEMORANDUM OF FACTS AND LAW IN SUPPORT OF ALLEGATION

This complaint is unique as to the facts and issues of Constitutional law presented. Plaintiff, as a totally and permanently disabled veteran, did initially complain to the Federal courts of threats of physical injury by the Federal government (Federal cause of action for damages as Fifth Amendment liberty interest violation) and the response by the Federal courts (as the guardian of due process under Article III the Constitution) was to intentionally deprive plaintiff of his Fifth Amendment right to procedural due process. The Supreme Court has held that a cause of action for damages is a property right and cannot be taken by adjudication without due process. *Mullane v.Central Hanover Bank and Trust Co.*, supra. Plaintiff's only recourse is to return to the same Federal courts (named defendants) to complain of constitutional limitation directed to the abuse of judicial power by the named defendants in the denial of plaintiff's Fifth Amendment property right in the prior litigation.

America's totally disabled veterans who became disabled pursuant to the Constitutional power of Congress to declare war did so in anticipation of receiving those rights guaranteed by the United States Constitution. These constitutional guarantees extend beyond those acquired in merely being born or naturalized as an American and are specific to those totally disabled veterans who paid dearly for said rights. Plaintiff, a totally and permanently disabled veteran, spent ten months crawling around the jungles of Vietnam fighting with the North Vietnamese and two years in an Army hospital where the surgeons

attempted to repair his injuries. The legal basis to the Constitution and Declaration of Independence require that plaintiff not be denied his constitutional rights by the same Government which placed him in harms-way.

"Where the United States is the defendant and the plaintiff is not suing for money improperly extracted or retained, the basis of the federal claim – whether it be the Constitution, a statute, or a regulation – does not create a cause of action for money damages unless ....that basis 'in itself can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" *United States v. Testan*, 424 U.S. 393, 403 (1976) (citing *Eastport S.S. Corp. v. United States*, 372 F.2d at 1008). The legal basis to the instant complaint (as in the prior complaints) does mandate compensation for the damage sustained.

"It is argued that the principle of sovereign immunity is an archaic hangover not consonant with modern morality and that it should therefore be limited wherever possible. There may be substance in such a viewpoint as applied to suits for damages". *Larson v. Domestic & Foreign Commerce Corporation*, supra. The Supreme Courts hesitation to entertain suits for specific relief in *Larson v. Domestic & Foreign Commerce Corporation* is absent in this suit for damages directed to the sovereign. Plaintiff has made six affirmative allegations of constitutional limitations upon the defendant courts' powers and has made claim that the defendant courts' actions amounted to an unconstitutional taking by the sovereign. This complaint provides a modern example of "a specific application of the constitutional exception to the doctrine of sovereign immunity". *Larson v. Domestic & Foreign Commerce Corporation*, at 696.

"By the Act constituting the judicial system of the United States, the district courts are courts both of common law and admiralty jurisdiction. In all cases at common law, the trial must be by jury." *The Sarah* 8 Wheat, 390 (1823). By "common law" the framers of the Constitution of the United States meant what the Constitution denominated in the third article, "law;" not merely its old and settled proceedings, but suits in which legal rights were to be ascertained and determined in contradistinction to those where equitable rights alone were regarded, and equitable remedies were administered. *Parsons v. Bedford et al.* 3 Peters, 433 (1830). The amendment to the Constitution of the United States, by which the trial by jury was secured, may, in a just sense, be well construed to embrace all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights. *Parsons v. Bedford,* supra.

Based upon the jurisdictional restrictions noted in *The Sarah* Court, the foresight of the *Parsons* Court, and the careful considerations of the *Larson* Court; the District court is the only forum within which plaintiff may bring this common law suit for damages against the sovereign with trial by jury.

WHEREFORE; the Complaint is amended to request that all dispositive motions be deferred to plaintiff's Seventh Amendment right to trial by jury.

"S/Melvin E. Blough" pro se

Melvin E. Blough
803 Tomahawk Trail
Brandon, FL 33511
(813) 651-3158

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been provided via certified mail to Assistant United States Attorney Patricia A. Kerwin (Suite 3200, 400 North Tampa Street, Tampa, FL. 33602) this fifteenth day of April, 2002 in accordance with Federal Rule of Civil Procedure 5.

"S/Melvin E. Blough" pro se

Melvin E. Blough

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

02 FEB-5 PM 12:50

Melvin E. Blough

Plaintiff,

Case No. 8:02-CV-194-T-24TGW

v.

United States of America, Supreme Court of the United States, William H. Rehnquist, Chief Justice of the Supreme Court, United States Court of Appeals for the Eleventh Circuit, United States District Court Middle District of Florida Tampa Division,

Defendants,

MOTION FOR REASSIGNMENT OF CASE DIRECTED TO ELIZABETH A. KOVACHEVICH AS CHIEF JUDGE

The initial papers were filed in this action on February 4, 2002 and Susan C. Bucklew was randomly selected as the presiding judge.

The complaint pending before this court alleges deliberate and intentional denial of due process by the named defendants'. Judge Bucklew was the presiding judge in the initial litigation (Case No. 98-1358-CIV-T-24E) and Judge Lazzara in the subsequent litigation (Case No. 8:00-CV-1631-T-26E). An obvious conflict

of interest exists in the assignment of this case to either Judge Bucklew or Judge Lazzara.

WHEREFORE; it is requested that this case be reassigned to a judge detached from the prior litigation.

"S/Melvin E. Blough" pro se
Melvin E. Blough
803 Tomahawk Trail
Brandon, FL 33511
(813) 651-3158

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been provided via first class mail to United States Attorney Mac Cauley (Suite 3200, 400 North Tampa Street, Tampa, FL. 33602) this fifth day of February, 2002 in accordance with Federal Rule of Civil Procedure 5.

"S/Melvin E. Blough" pro se

Melvin E. Blough

DEPARTMENT OF VETERANS AFFAIRS
Regional Office
PO Box 1437
St Petersburg FL 33731-1437

March 19, 1997

In Reply Refer To:
317/271C-7935
C 25 707 037

Mr. Melvin Blough
803 Tomahawk Trail
Brandon FL 33511

Dear Mr. Blough:

The following certification is furnished for use in determining entitlement to Civil Service Preference for the spouse of a service connected disabled veteran.

This is to certify that the records of the U.S. Department of Veterans Affairs (VA) disclose that Melvin Blough enlisted September 25, 1968, was separated August 31, 1971, from the Armed Forces of the United States and has an existing service connected disability. The percentage and nature of the service connected disability is shown below:

PERCENT	DISABILITY
100%	Amputation, below knee, bilateral
60%	Wound, left upper extremity with fractures of metacarpals and incomplete paralysis, left median nerve, with complete paralysis, left ulnar nerve.

30%	Splenectomy
30%	Recurrent urethral condylomata with urethral stricture, p.o.
20%	Wound, pelvic girdle, mg XV
10%	Laceration, external cutaneous nerve, right thigh
10%	Wound, abdomen with laceration of liver

100 percent Combined Percentage

The veteran is not currently rated as unemployable due to service connected disabilities. The veteran is permanently and totally disabled.

Sincerely yours,

"S/Bill Bryant"
BILL BRYANT
Veterans Services Officer

271C/